

ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20541

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DEC 20 2000

In the Matter of

Amendment of Section 73.202(b)
Table of Allotments
FM Broadcast Stations
(Nogales and Vail, AZ)

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MM Docket No. 00-31
RM - 9815

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

REPLY COMMENTS TO BIG BROADCAST OF ARIZONA, LLC.

Desert West Air Ranchers Corporation ("Petitioner"), licensee of Station KZNO(FM), Nogales, Arizona, hereby replies to the "Comments and Counterproposal of Big Broadcast of Arizona, LLC" in response to the Public Notice issued on December 5, 2000, Report No. 2453¹. Big Broadcast of Arizona, LLC. ("BBA") requests that Channel 253A be allotted to Vail as its first local service at a transmitter site reference point which will allow the retention of Channel 252A at Nogales for Station KZNO. However, BBA's proposal can be accommodated on another channel consistent with Petitioner's proposed change in community of license. In support hereof, Petitioner states as follows:

1. BBA's interest in providing local service to Vail can be accommodated on an alternate channel. As indicated in the attached Technical Comments either Channel 272A or Channel 283A can be allotted to Vail as a new allotment at coordinates closer to Vail than Channel 253A. In fact, the Commission's data base already lists Channel 272A as a proposed addition for Vail with no site restriction. See also attached Technical Comments. As a result, BBA's interest

1. Petitioner notes that REC Networks filed late reply comments on May 4, 2000.

CH4

in serving Vail can be accommodated consistent with Petitioner's proposal to change community of license for Station KZNO to Vail as a first local service.

2. Petitioner's proposal not BBA's proposal for Channel 253A at Vail should be considered a first local service. The filing of BBA's proposal in the context of this proceeding should be considered a request for a second local service since it was filed five and one half (5 ½) months later and two alternate channels, both of which are closer to Vail, are available for allotment. BBA could have selected either one of those alternate channels to serve Vail instead of choosing Channel 253A. In fact, Channel 253A must be site restricted by 15.3 km southeast which marginally provides a 70 dBu contour over Vail.

3. BBA can not lay claim to providing a first local service to Vail where, in view of the alternate channels with less site restriction, its only purpose is to deny Petitioner's proposal. See Harrisburg and Albemarle, North Carolina, 7 FCC Rcd 108 (1992) where providing a first local service was decisional. In that case, the original Petitioner requested the allotment of a channel to Harrisburg, North Carolina as a first local service. When a station in Albemarle, North Carolina subsequently attempted to change community of license to Harrisburg on an unrelated, non-conflicting channel, the Commission treated the Albemarle station's proposal as a second local service to Harrisburg. As a result, the Albemarle station proposal was denied as a second local service under the Commission's priorities. However, had the Albemarle station filed first, as Desert West Air Ranchers Corp has done here, the request could have been approved as a first local service.

4. In this case, Petitioner's proposal is entitled to be evaluated as a first local service particularly in view of the fact that two alternate channels are available and BBA could have selected either one by filing its own separate petition for rule making. However, BBA, the licensee of Station KOHT, Marana, Arizona on the first adjacent channel, selected Channel 253A because it was more

interested in defeating Petitioner's relocation than in providing service to Vail itself. If BBA's interest in this proceeding is to provide service to Vail, it should support the allotment of Channel 272A or Channel 283A.

5. BBA argues that the detriments in Petitioner's proposal are not outweighed by the benefits. However, Petitioner previously explained in its Comments that there are no detriments in relocating Station KZNO from Nogales. The detriments were alleged to be (1) a substantial net loss area, (2) the creation of white and grey areas and (3) the absence of domestic local stations which would continue to serve Nogales.

6. As for the gain/loss analysis, Petitioner demonstrated and found support in the Commission's own language in the MO & O in Community of License, 5 FCC Rcd 7094, 7097 (1990) at paragraph 19 that the station's existing service not its potential service should be considered in evaluating loss area. See Petitioner's Comments at paragraph 5. Of course, potential loss area could be considered under Priority 4 -- other public interest matters. However, such consideration would not outweigh a first local service to Vail. Here, Station KZNO's potential for 6 kW service is not certain because according to the Commission's records, Station KZNO is not automatically entitled to increase to 6 kW as is the case with other 3 kW stations due to the U.S.-Mexican Treaty. See Petitioner's Comments at Note 1. As a result, the actual loss area is comprised of 291 sq. kilometers with a population of 24,715 persons. On the other hand, at Petitioner's proposed site for Vail which has been shown to satisfy the Woodstock criteria, the gain area is 2,774 sq. km with 255,908 persons. See Petitioner's Comments at paragraph 13. Thus, the public will benefit from a substantial net gain in area and population.

7. As far as the alleged creation of white and grey area is concerned, Petitioner demonstrated in its Comments that none would be created for several reasons. First, the Commission can properly consider Mexican stations of which there are 12 in the adjacent community of Nogales, Mexico and which provide service to the 92% Spanish speaking population of Nogales, Arizona. See Petitioner Comments at paragraphs 9 & 10. Petitioner also noted in its Comments that when Stations KOFH,² and KNOG, Nogales, Arizona are considered and when Station KZNO's existing coverage area is considered, there is no white or grey area. See Petitioner's Comments at paragraph 9 & 10. Based on Petitioner's previous showings, the residents of KZNO's existing or potential 60 dBu service area are well served.

8. If the Commission were still unsatisfied with the service to residents of the loss area, Petitioner's proposal of the allotment of Channel 251A to Patagonia, Arizona as a first local service for which it expressed its intention to apply for the channel and construct the facility, could have been included in this proceeding. This proposal was not placed on Public Notice for reply comments. Petitioner assumes that the Commission must have been satisfied with Petitioner's demonstration that the residents in the loss area are well served. Otherwise, the Commission could have included the proposal in this proceeding as a related proposal, as it has done in many other cases even though there is no technical conflict with the proposal set forth in the NPRM. See e.g., Harrisburg and Albemarle, North Carolina, supra, where the Albemarle station's proposed change in community of license did not conflict with the original proposal for Harrisburg. See also Anniston, Alabama and College Park, Georgia, et al., DA 00-322, released April 28, 2000 where new allotments at Anniston and Ashland, Alabama were granted in order to provide service to

2. Station KOFH is currently operating and filed its license application on November 28, 2000 (BLH-20001128AAA)

underserved areas left behind by the Anniston station's relocation, exactly the situation here. See also the recent cases of Dayton, Indian Village and Reno, Nevada, DA 00-2613, released November 17, 2000; Linden, White Oak, Lufkin, Corrigan, Mount Enterprises, and Pineland, Texas and Zwolle, Louisiana, DA 00-2570, released November 9, 2000 and Mill Hall, Jersey Shore and Pleasant Gap, Pennsylvania, DA 00-2426, released October 27, 2000. These are just a few of the numerous cases where the Commission considers related proposals for various reasons even though they are not technically in conflict.

9. Petitioner is interested in operating a station to serve Patagonia. If the Commission decides that the allotment is not needed to serve residents of the loss area,³ then Petitioner will file a petition at the conclusion of this proceeding to allot Channel 251A to Patagonia provided Channel 252A is deleted from Nogales and Channel 253A allotted to Vail, as requested.


10. Finally, BBA alleged that Nogales would be left without domestic local stations. However, both KOFH and KNOG provide local service to Nogales. Thus, the comparison is whether Nogales should receive a third local service or Vail should receive a first local service. Under the Commission's priorities, Petitioner's proposal for Vail should prevail.

3. Petitioner also notes that there are recent pending proposals and applications which would cover portions of the potential and existing loss area. They are -- the application of KKYZ, Sierra Vista, Arizona (BMPH-20001023AEO) and pending petitions to add channels to Huachuca City, Rio Rico, Sonoita, Arizona (MM Docket Nos. 00-208, 00-209, 00-210).

11. Accordingly, Petitioner urges the Commission to approve the change in community of license for Station KZNO from Nogales to Vail, Arizona as a first local service.

Respectfully Submitted,

DESERT WEST AIR RANCHERS CORPORATION

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Its Counsel

December 20, 2000

TECHNICAL COMMENTS
KZNO COMMUNITY OF LICENSE CHANGE
VAIL, ARIZONA

Desert West Air Ranchers Corporation ("Desert"), licensee of FM Station KZNO, Nogales, Arizona, has proposed to change the Community of License of FM Station KZNO from Nogales, Arizona to Vail, Arizona. KZNO, changing from its current channel 252 to its first adjacent channel 253, would remain a Class A Station domestically and increase to a Class AA with respect to Mexico.

The Commission has proposed to accept Desert's proposal and issued its Notice of Proposed Rulemaking MM Docket 00-31 (the "NPRM"). In the NPRM, the Commission expressed concerns regarding the area and population gain/loss that the proposal would create. Desert filed its Comments on the required date ("Comments"). These Technical Comments will readdress such concerns as well as address responses by other commentors.

BIG BROADCASTERS VAIL PROPOSAL

Big Broadcasters of Arizona LLC ("BBA") filed its comments in this proceeding also seeking an additional channel at Vail, Arizona. BBA seeks to add channel 253A to Vail instead of allowing Desert's proposal to move KZNO to Vail on Channel 253A. Foremost is the fact that BBA's proposal need not be counter to Desert's proposal at all. If BBA would like an additional channel to be allotted to Vail for its use, then Channel 283A or Channel 272A could be allotted to Vail as its second local service. The Commission has already protected Channel 272A in its database for its use at Vail. Therefore, the two proposals need not be considered as mutually exclusive. More importantly, BBA's proposal for 253A at Vail is over 15 km from the Commission's coordinates for that community making actual site selection difficult, while Desert's proposed alternative is only 10.9 km distant for Channel 283A and the Commission's proposed Channel 272A can be assigned without any site restriction. **EXHIBIT A** and **EXHIBIT B** attached hereto are the channel spacing studies and other technical information for Channel 283A and Channel 272A respectively.

NEW SERVICE TO VAIL AND PATAGONIA

In its Comments, Desert proposed the use of an actual transmitter site for KZNO at Vail, Arizona and certified as to the site's reasonable availability. Desert also demonstrated that: (i) that the proposal is fully spaced to all existing and proposed domestic allocations and facilities; (2) the proposal would be consistent with the US/Mexican Treaty; and (iii) the proposed facility would place a city grade contour (70 dBu) over Vail with line of sight over the entire community. Desert

further demonstrated that the gain area of the proposed site at Vail, calculated under the provisions of Woodstock, is 2,774 square kilometers with 255,908 persons.

Desert argues that there is neither white nor gray area created by Desert's move of KZNO to Vail; however, if the Commission feels that there is loss area created by Desert's move, then Desert proposed in its Comments that Channel 251A could be allotted to Patagonia, Arizona ("Patagonia Channel") as its First Local Service. The new service would fill in the loss area, if any, created by the loss of KZNO to Vail and more importantly, Channel 251A can only be allotted to Patagonia if the KZNO authorization in Nogales is moved to Vail. Desert stated that it would apply for the Patagonia Channel, if allotted by the Commission and, if required by the Commission, would delay the program test authority of KZNO at Vail until the Patagonia Channel is activated.

KZNO LOSS AREA

Desert's Comments demonstrated that the 1990 population within the currently authorized KZNO 60 dBu U.S. coverage area of 291 square kilometers at Nogales, Arizona is 24,715 persons. The Commission, in its NPRM, has pointed out the "The public has a legitimate expectation that existing service will continue". Desert argues that this existing service is the actual service provided by the authorized facility of KZNO as it is being provided **currently and** as it has been **for the last 20 years**. Such loss of service should not be considered a perfect circle of what the station could potentially be. It was demonstrated in the Comments that the loss of this *existing* service is completely covered by FM Stations KNOG Nogales, Arizona, and KOFH, Nogales, Arizona and therefore, no white or grey area is created.

If the Commission insists on using the circular method of calculating the KZNO loss area rather than the actual existing loss area, then, as Desert noted in its Comments, KZNO must be evaluated as an international Class A limited to a maximum of 3.0 kw ERP at 100 meters HAAT. According to both the Commission's database and the International Branch, KZNO's international status under the US/Mexican Treaty is **Class A and not Class AA**. Section 73.207(b)(3)(i) of the Commission's rules clearly and specifically states that "U.S. or Mexican assignments or allotments which have been notified internationally as Class A are limited to a maximum of 3.0 kw ERP at 100 meters HAAT, or the equivalent". Therefore, KZNO does not currently have the authority to operate as a international Class AA with 6 kw at 100 meters and must be evaluated with maximum facilities of 3.0 kW at 100 meters HAAT producing a 60 dBu class contour distance of 24 kilometers using the uniform terrain method. The Comments evaluated the Class A loss area as 1856 square kilometers (approximately 40% of which is in Mexico) and 26,625 persons within the United States. It was demonstrated in the Comments that the loss of this Class A service is completely covered by FM Stations KNOG Nogales, Arizona, and KOFH, Nogales, Arizona and therefore, no white or grey area is created.

In case the Commission further insists on evaluating the existing authorization for KZNO in excess of its actual coverage and in excess of its international authorization under the US/Mexican

Treaty, then Desert has calculated the KZNO loss area as an international Class AA with 6 kw at 100 meters with a 28 km uniform terrain circular 60 dBu contour. The Comments evaluated the Class AA circular loss area as 2463 square kilometers (40% of which is in Mexico) and 26,625 persons within the United States and that loss area is almost completely covered by KNOG, Nogales, Arizona, KOFH, Nogales, Arizona. If the Commission considers the addition of the Patagonia Channel, as demonstrated in the Comments, **no white** would be created and only approximately 40 square kilometers of gray area would be created. More importantly, the Patagonia Channel provides **new service to approximately 100 square kilometers of white area and 20 square kilometers of gray area**. This more than offsets the lost gray area created by the loss of KZNO if KZNO is evaluated in excess of its existing authorization.

If the Commission does not consider the Patagonia Channel, then Desert proposes that the Commission consider several newly proposed services to the possible loss area, if any such loss area is deemed to be created. Additionally there is the coverage of three new allocations to serve the area: Channel 263A at Sonoita, Channel 232A at Huachuca City and Channel 300A at Rio Rico. The Commission has issued Notices of Proposed Rulemaking and the comment date has passed. Also KKYZ, Sierra Vista, Arizona has applied for an upgraded facility which will provided coverage to the area. EXHIBIT C hereto shall demonstrate the uniform terrain coverage of FM Station KKYZ, as applied for in BPH-20001023AEO, as amended, and the uniform terrain coverage of the allotment proposals all of which provide coverage to the possible loss area, if any such loss area is deemed to be created.

Note: All exhibits, contours, spacing studies and population estimates were prepared in accordance with FCC rules and regulations using RadioSoft FMR software and SoftWright Terrain Analysis Package software.

EXHIBIT A

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ComStudy 2.2 search of channel 283 (104.5 MHz Class A) at:

31-59-39 N, 110-36-51 W.

CALL	CITY	ST	CHN	CL	DIST	S	BRNG	CLEARANCE
ALC	NOGALES	SO	282	B	80.02	105	203.1	-24.98
XHCNEFM	CANANEA	SO	284	B	116.07	105	165.1	11.07
XHCNEFM	CANANEA	SO	284	B	116.07	105	165.1	11.07
ALC	TUCSON	AZ	281	A	46.02	31	313.3	15.02
XHNIFM	NOGALES	SO	286	B	80.02	64	203.1	16.02
XHNIFM	NOGALES	SO	286	B	80.30	64	203.7	16.30
KZPT	TUCSON	AZ	281	A	50.28	31	310.9	19.28
KZPT	TUCSON	AZ	281	A	50.28	31	310.9	19.28
KRQQ	TUCSON	AZ	229	C	55.13	29	301.1	26.13
KRQQ	TUCSON	AZ	229	C	55.13	29	301.1	26.13
KRQQ	TUCSON	AZ	229	C	55.17	29	301.0	26.17
KZZP	MESA	AZ	284	C	201.19	165	318.1	36.19
KZZP	MESA	AZ	284	C	201.19	165	318.1	36.19
ALC	WILLCOX	AZ	285	C2	96.04	55	63.2	41.04
KWCX-FM	WILLCOX	AZ	285	C2	98.20	55	75.1	43.20
K285DL	CASAS ADOBES	AZ	285	D	50.28	0	310.9	50.28
ALC	CANANEA	SO	280	B	116.07	64	165.1	52.07
K285DL	SAN MANUEL	AZ	285	D	52.10	0	341.9	52.10
ALC	SONOITA	SO	282	B	204.85	105	266.5	99.85
ALC	CABORCA	SO	283	A	205.58	100	225.9	105.58
KPTY	GILBERT	AZ	280	C2	163.41	55	328.6	108.41
KPTY	GILBERT	AZ	280	C2	163.41	55	328.6	108.41
KPTY	GILBERT	AZ	280	C2	163.41	55	328.6	108.41
KPTY	GILBERT	AZ	280	C2	173.60	55	332.4	118.60
ALC	LOS MOSCOS	CH	283	A	239.07	100	101.6	139.07
ALC	SAN FRANCISQUITO	SO	280	A	168.06	25	255.0	143.06
K285BF	CLIFTON, ETC.	AZ	285	D	157.37	0	50.5	157.37
ALC	SILVER CITY	NM	281	C2	236.02	55	67.8	181.02

EXHIBIT A

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ALLOCATION SITE CONTOUR PROTECTION WITH MEXICO CHANNEL 283A VAIL, ARIZONA

PROPOSED FACILITY

COMMUNITY : VAIL, ARIZONA
CHANNEL : 283
CALL : NEW ALLOCATION
CLASS : A
INTERNATIONAL : AA
COORDINATES : 31-59-39 110-36-51
RADIATING CENTER : 1297.0 METERS
AZIMUTH TO PROTECTED FACILITY: 203.1 DEGREES
STANDARD RADIALS : 180.0 HAAT: -59.7 M
: 225.0 HAAT: -19.1 M
INTERPOLATED : 203.1 HAAT: -38.9 M (30 M USED)
RESTRICTED POWER : 0.200 KW ON 203.1 DEGREE RADIAL
INTERFERING CONTOUR : 48 DBU (50,10)
DISTANCE TO INTERFERING CONTOUR: 13.5 KM

PROTECTED ALLOCATION AT NOGALES, SONORA, MEXICO

COMMUNITY : NOGALES, SONORA
CHANNEL : 282
CALL : ALLOCATION
CLASS : B
COORDINATES : 31-19-49 110-56-42
RADIATING CENTER : 1426 M
MAXIMUM ERP : 50 KW
RELATIONSHIP : 1ST ADJACENT
PROTECTED CONTOUR: 54 DBU (50,50)
DISTANCE TO PROTECTED CONTOUR : 65.0 KM (MAXIMUM)

SUMMARY

DISTANCE TO PROTECTED CONTOUR NOGALES : 65.0 KM
DISTANCE TO RESTRICTED CONTOUR VAIL : 13.5 KM
TOTAL DISTANCE RESTRICTED PLUS PROTECTED: 78.5 KM
ACTUAL SPACING : 80.0 KM

CLEARANCE 1.5 KM

NO OVERLAP OF PROTECTED AND INTERFERING CONTOUR

EXHIBIT B

Page 1 of 2

ComStudy 2.2 search of channel 272 (102.3 MHz Class A) at:

32-02-48 N, 110-42-42 W.

CALL	CITY	ST	CHN	CL	DIST	S	BRNG	CLEARANCE
ALC	VAIL	AZ	272	A	0.00	115	90.0	-115.00
ALC	CANANEA	SO	272	B	124.29	163	161.7	-38.71
KKYZ	SIERRA VISTA	AZ	269	C2	50.30	55	149.3	-4.70
KCMT	ORO VALLEY	AZ	270	A	39.54	31	313.2	8.54
KCMT	ORO VALLEY	AZ	270	A	39.54	31	313.2	8.54
ALC	ORO VALLEY	AZ	270	A	45.06	31	328.1	14.06
KKYZ	SIERRA VISTA	AZ	269	C2	69.96	55	139.6	14.96
KKYZ	SIERRA VISTA	AZ	269	C2	69.96	55	139.6	14.96
KKYZ	SIERRA VISTA	AZ	269	C2	69.96	55	139.6	14.96
XHQTFM	NOGALES	SO	274	B	84.00	64	196.3	20.00
XHQTFM	NOGALES	SO	274	B	84.00	64	196.3	20.00
KNIX-FM	PHOENIX	AZ	273	C	190.90	165	318.8	25.90
KNIX-FM	PHOENIX	AZ	273	C	190.90	165	318.8	25.90
KWRQ	CLIFTON	AZ	271	C1	160.50	133	53.9	27.50
KWRQ	CLIFTON	AZ	271	C1	161.13	133	54.2	28.13
None	TUCSON	AZ	219	D	32.90	0	314.3	32.90
K274AQ	TUCSON	AZ	274	D	33.84	0	314.1	33.84
ALC	SASABE	SO	270	B	101.99	64	231.0	37.99
KKYZ	SIERRA VISTA	AZ	269	A	69.96	31	139.6	38.96
KKYZ	SIERRA VISTA	AZ	269	A	69.96	31	139.6	38.96
None	SAN MANUEL	AZ	219	D	40.85	0	359.5	40.85
K269CY	TUCSON	AZ	269	D	40.85	0	359.5	40.85
K272DC	ORO VALLEY	AZ	272	D	44.25	0	350.9	44.25
K219CR	SIERRA VISTA	AZ	219	D	63.28	0	152.3	63.28
ALC	COMOBABI	AZ	275	A	110.95	31	274.8	79.95
ALC	COMOBABI	AZ	275	A	110.95	31	274.8	79.95
K219BU	NOGALES	AZ	219	D	81.74	0	196.2	81.74
ALC	SONOITA	SO	270	C	188.28	94	264.3	94.28
ALC	CANANEA	SO	218	A	125.98	8	162.7	117.98
ALC	COLONIA REFORMA	SO	271	A	184.70	61	259.0	123.70
KRMC	DOUGLAS	AZ	219	A	140.27	10	123.3	130.27
K218CY	CLIFTON	AZ	218	D	161.15	0	54.2	161.15
KJZZ	PHOENIX	AZ	218	C	190.90	29	318.8	161.90

EXHIBIT B

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ALLOCATION SITE CONTOUR PROTECTION WITH MEXICO CHANNEL 272A VAIL, ARIZONA

PROPOSED FACILITY

COMMUNITY : VAIL, ARIZONA
CHANNEL : 272
CALL : NEW ALLOCATION
CLASS : A
INTERNATIONAL : AA
COORDINATES : 32-02-48 110-42-42
RADIATING CENTER : 1112.0 METERS
AZIMUTH TO PROTECTED FACILITY: 161.7 DEGREES
STANDARD RADIALS : 135.0 HAAT: 6.6 M
: 180.0 HAAT: -47.6 M
INTERPOLATED : 161.7 HAAT: -25.6 M (30 M USED)
RESTRICTED POWER : 0.900 KW ON 161.7 DEGREE RADIAL
INTERFERING CONTOUR : 34 DBU (50,10)
DISTANCE TO INTERFERING CONTOUR: 57.2 KM

PROTECTED ALLOCATION AT CANANEA, SONORA, MEXICO

COMMUNITY : CANANEA, SONORA
CHANNEL : 272
CALL : ALLOCATION
CLASS : B
COORDINATES : 30-58-57 110-18-01
RADIATING CENTER : 1740 M
MAXIMUM ERP : 50 KW
RELATIONSHIP : CO-CHANNEL
PROTECTED CONTOUR: 54 DBU (50,50)
DISTANCE TO PROTECTED CONTOUR : 65.0 KM (MAXIMUM)

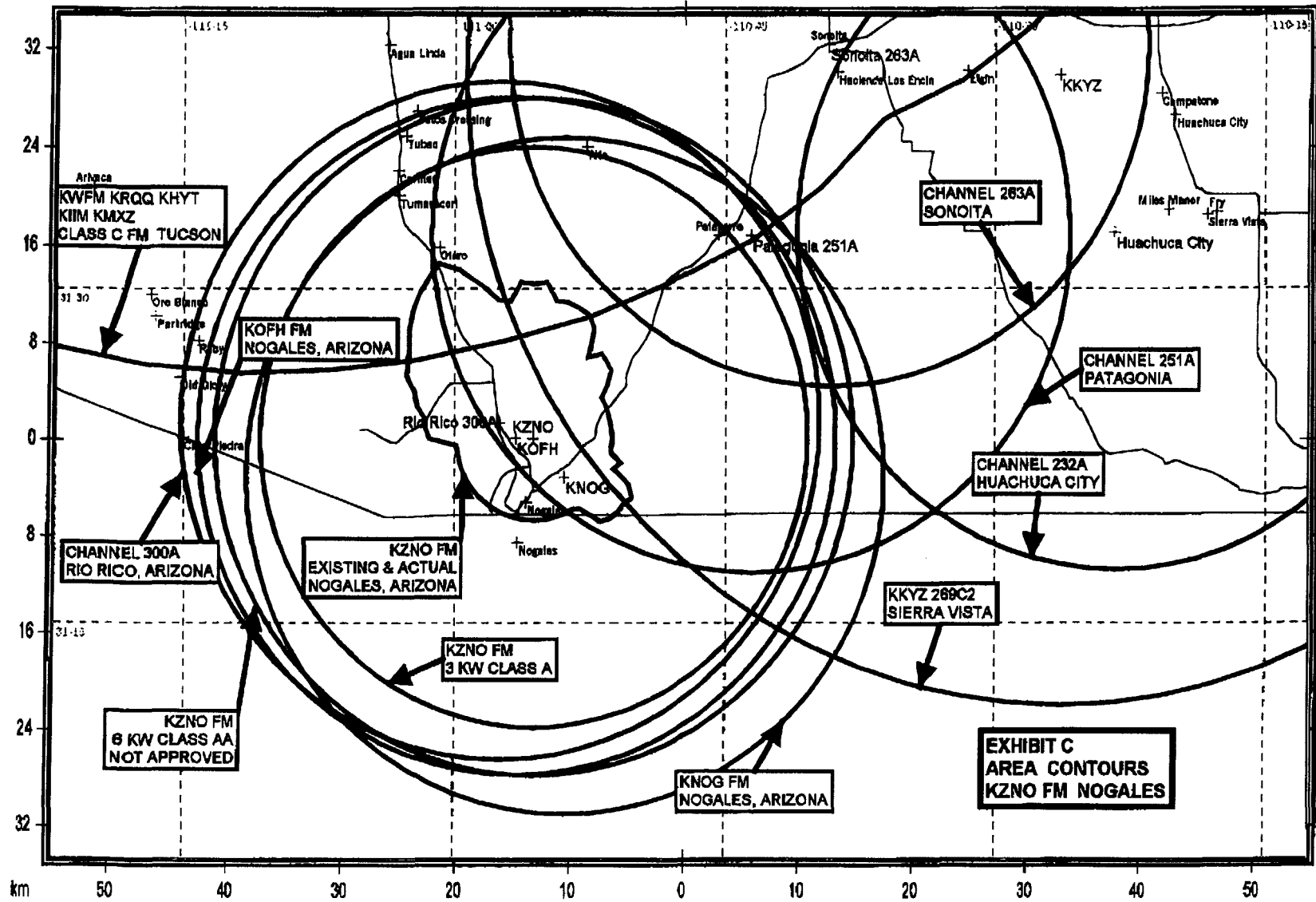
SUMMARY

DISTANCE TO PROTECTED CONTOUR CANANEA : 65.0 KM
DISTANCE TO RESTRICTED CONTOUR VAIL : 57.2 KM
TOTAL DISTANCE RESTRICTED PLUS PROTECTED: 122.2 KM
ACTUAL SPACING : 124.3 KM

CLEARANCE 2.1 KM

NO OVERLAP OF PROTECTED AND INTERFERING CONTOUR

Map Header



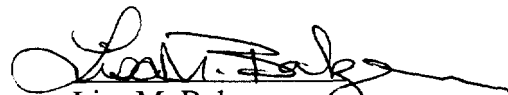
CERTIFICATE OF SERVICE

I, Lisa M. Balzer, a secretary in the law firm of Shook, Hardy and Bacon, do hereby certify that I have on this 20th day of December, 2000 caused to be mailed by first class mail, postage prepaid, copies of the foregoing **REPLY COMMENTS TO BIG BROADCAST OF ARIZONA, LLC.** to the following:

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Lisa M. Balzer

* HAND DELIVERED